

## REMARKS

Claims 1-20 are currently pending in the present patent application. Claims 1-20 are rejected. Claims 1 and 8-13 are amended herein. No new matter has been added. Applicants respectfully request further examination and reconsideration in view of the remarks set forth below.

## Claim Rejections

### 112

Claims 12 and 13 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. Specifically, the Examiner has alleged that Claim 12 discloses “determining a response time of servers not discovered,” “calculating stress factors for each of the servers not discovered,” and “servers not discovered” and that the Applicants disclosure fails to disclose or even hint disclosing servers not discovered. Applicants respectfully traverse the rejection for the following rational.

Applicants believe the Examiner has misinterpreted the claim language. Specifically, the Examiner quotes the feature “determining a response time of servers not discovered.” However, the Examiner fails to quote the remaining portion of the feature that states “determining a response time of servers not discovered in said a)” (emphasis added). Applicants are not claiming determining a response time of servers that are not discovered. Applicants are claiming “determining a response time of servers that are not discovered in said a).”

Applicants have amended Claim 12 to more distinctly claim the subject matter in the interest of furthering prosecution of the Claim. The rejected feature “determining a response time of servers that are not discovered in said a).” has been amended to include “said b) further comprises determining a response time of a second set of servers not discovered in said a); Applicants submit that no new matter has been added to Claim 12 and that the “second set of servers” feature has been added to clarify the original features of the claim.

The features “calculating stress factors for each of the servers not discovered,” and “servers not discovered” are also objected. For the rational presented above and in light of the Claim amendments to Claims 12 and 13, Applicants believe the rejection has been overcome and respectfully request the rejection be removed.

Claims 12 and 13 are also rejected under U.S.C. 112, second paragraph for failing to particularly point out and claim the subject matter the Applicant regards as the invention. Applicants respectfully traverse the rejection for the following rational.

As stated above, Applicants believe the Examiner has misinterpreted the rejected features of Claims 12 and 13. Particularly, the Examiner has submitted that Applicants are claiming "servers not discovered." This accusation is incorrect. Applicants would like to point out that the claim language states "servers not discovered in said a)." Applicants are not claiming determining a response time of servers that are not discovered. Applicants are claiming "determining a response time of servers that are not discovered in said a)."

However, in the interest of more distinctly claiming the subject matter the Applicants regards as the invention, Applicants have amended Claims 12 and 13 to distinguish a first set of servers discovered in a and a second set of discovered servers not discovered in a.

As such, Applicants believe Claims 12 and 13 overcome the rejections and respectfully request the rejections be removed.

Claims 1-11 and 14-19 are rejected under 35 U.S.C. 102(e) as being anticipated by Kazemi (7,089,281). The rejection is traversed for the following rational.

Applicants direct the Examiner to amended Independent Claim 1 that recites:

A method of dynamically balancing load in a system of servers, comprising:

a) monitoring for servers that are able to respond to requests directed at the system;

b) determining a performance metric for a first set of said servers discovered by said monitoring for the servers;

c) maintaining a table comprising said performance metric for said first set of discovered servers; and

d) in response to receiving a request, routing said request to a selected server in the system of servers based on said performance metric, wherein the system of servers comprises the first set of discovered servers.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." /Verdegaal Bros. v. Union Oil Co. of California/, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). ... "The identical invention must be shown in as complete detail as is contained in the ... claim." /Richardson v. Suzuki Motor Co./, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989). The elements must be arranged as required by the claim.

Applicants submit that Kazemi fails to teach each element of Independent Claim

1. Specifically, Applicant submits that Kazemi fails to teach or suggest (emphasis added) "monitoring for servers that are able to respond to requests directed at the system," as claimed. Applicants also submit that Kazemi fails to teach or suggest "determining a performance metric for the first set of servers discovered by said monitoring," as claimed.

The invention of Kazemi is used for "storage resources" as opposed to server resources as with the present invention. Applicants would like to point out that there is a distinct difference between the two. For example, in a storage resource system, data

that is stored on a server "a" can not be accessed from server "b" because the information is stored on server "a". In a storage system redundancy is used to preserve data in case of failure. With a server resource environment, a request to perform an operation on server "a" can be routed to server "b" as long as server "b" has the required performance metric to respond to the request.

Kazemi uses a DSR (dynamic session redirector) to provide a single system image for resources that are distributed on many different servers (summary of the invention). "The DSR examines the incoming requests and passes them on to the appropriate resources and then forwards the results of any request to the requesting client." Kazemi teaches "DSR keeps a table of the resources provided by each network storage device." With Kazemi, the locations of resources are known and kept track of in a table. Kazemi fails to teach or suggest discovering of any kind.

In addition, Applicants submit that Kazemi fails to teach or suggest "determining a performance metric for the first set of servers discovered by said monitoring," as claimed. With the present invention, monitoring is used to discover servers capable of responding to a requests. Performance metrics are then determined for the discovered servers. Applicants submit that Kazemi does not teach or suggest "discovering" servers. With Kazemi, the particular resources and associated servers are known and not discovered since Kazemi is dealing with a storage system and must know where the data is located in order to retrieve it. It is necessary for Kazemi to know where data is stored so the data can be retrieved since Kazemi deals with data storage systems. If Kazemi had to discover where the data was stored, the response time would be severely impacted.

For this rational, Independent Claim 1 is patentable over Kazemi. Independent Claims 1, 8 and 14 recite similar limitations and are also patentable over Kazemi. As such, Applicants submit that Claims 1-11 and 14-19 are patentable over Kazemi and respectfully request the rejection be removed.

Claims 12-13 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kazemi in view of Bonnell (2002/0178262). The rejection is respectfully traversed for the following rational.

**To establish prima facie obviousness of a claimed invention, all the claim limitations must be taught or suggested by the prior art. In re Royka, 490 F.2d 981, 180 USPQ 580 (CCPA 1974). (MPEP 2143.03).**

As stated above, Kazemi fails to teach or suggest monitoring to discover servers, as claimed. Applicants have reviewed Bonnell and submit that Bonnell fails to remedy the deficiencies of Kazemi. In particular, Applicants submit that Bonnell also fails to teach monitoring to discover servers.

Bonnell may purport monitoring of server performance, however, Bonnell fails to teach or suggest monitoring to discover servers, as claimed.

For this rational, Claims 12-13 and 20 are patentable over Kazemi in view of Bonnell. As such, Applicants respectfully request the rejection be removed.

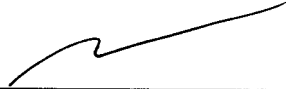
## CONCLUSION

In light of the above remarks, Applicants respectfully request reconsideration of the rejected claims. Based on the remarks presented above, Applicants respectfully assert that Claims 1-7, 9-15 and 17-23 overcome the rejections of record and, therefore, Applicants respectfully solicit allowance of these Claims.

The Examiner is invited to contact Applicants' undersigned representative if the Examiner believes such action would expedite resolution of the present application.

Respectfully submitted,  
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